UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1998/1/Add.1
15 May 1998

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Sixteenth session
27-31 July 1998

ANNOTATIONS TO THE PROVISIONAL AGENDA

Prepared by the Secretary-General pursuant to the request of the Working Group on Indigenous Populations at its fifteenth session

1. Election of officers

1. Rule 23 of the rules of procedure of the functional commissions of the Economic and Social Council provides that, unless the Commission decides otherwise, its subsidiary organs shall elect their own officers.

2. Adoption of the agenda

2. Rule 7 of the rules of procedure provides that the agenda shall be adopted at the beginning of each session, after the election of officers, on the basis of the provisional agenda. The provisional agenda for the present session of the Working Group on Indigenous Populations, as drafted in consultation with the Chairperson-Rapporteur, Ms. Erica-Irene Daes, is contained in document E/CN.4/Sub.2/AC.4/1998/1.

3. The provisional agenda for the sixteenth session of the Working Group contains the following substantive items: "Review of developments pertaining to the promotion and protection of the rights and fundamental freedoms of indigenous people: general statements"; "Principal theme: Indigenous peoples - education and language"; "Indigenous peoples and health: follow up and recent developments"; "Standard-setting activities: evolution of standards concerning the rights of indigenous people" and the sub-item on "Possible future standard-setting activities, including principles and

guidelines for private sector energy and mining concerns"; "Consideration of the final report of the Special Rapporteur of the Sub-Commission on treaties, agreements and other constructive arrangements between States and indigenous populations"; "Consideration of the working paper of the Special Rapporteur of the Sub-Commission on indigenous peoples and their relationship to land"; "Consideration of the establishment of a permanent forum for indigenous people"; "International Decade of the World's Indigenous People"; "Other matters".

3. Organization of work

4. The attention of the Working Group is drawn to the provisional agenda and the need to complete its discussion of the substantive items within the five working days allotted. At previous sessions, the Chairperson-Rapporteur has set strict time limits in order to ensure that all participants wishing to make a statement are given the opportunity to do so. Such time limits will again be necessary in order to ensure that all items of the agenda are comprehensively discussed.

4. Review of developments: general statements

5. In accordance with the mandate established under Economic and Social Council resolution 1982/34, the Working Group is authorized to review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous populations, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind the final report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4).

6. The item on the agenda reviewing developments affecting indigenous peoples provides invaluable information to members of the Working Group. The information provided is considered by them as strengthening ongoing efforts of the United Nations system to recognize, promote, protect and restore the rights of indigenous peoples. In its resolution 1998/13 of 9 April 1998, the Commission on Human Rights urged the Working Group to continue its comprehensive review of developments and of the diverse situations and aspirations of the world's indigenous people. However, it may be noted that the Working Group is not a chamber of complaints and cannot act upon specific allegations concerning violations of human rights. Information under this item of the agenda is contained in document E/CN.4/Sub.2/AC.4/1998/2.

5. Principal theme: indigenous peoples - education and language

7. At its fifteenth session, the Working Group decided to include on its agenda an item on indigenous peoples, education and language. In its resolution 1997/14, the Sub-Commission endorsed the decision of the Working Group and requested the Secretary-General to invite Governments, intergovernmental organizations and indigenous and non-governmental

organizations to provide information, in particular on matters relating to education and language, to be made available as a background paper at the Working Group. The background paper prepared by the Secretary-General as well as other relevant information is available in document E/CN.4/Sub.2/AC.4/1998/3 and addenda.

6. Indigenous peoples and health: follow up and recent developments

8. At its fifteenth session, the Working Group decided to retain as a separate item of its agenda the theme of indigenous peoples and health. In its resolution 1997/15, the Sub-Commission took note of the work of the United Nations Educational, Scientific and Cultural Organization in the field of the human genome and recognized the need for a systematic analysis of the problems faced by indigenous peoples when matters of biodiversity, genetics and the use of biological resources and sustainability are discussed, negotiated and determined. An information note on indigenous peoples and the human genome project prepared by the Secretary-General is contained in document E/CN.4/Sub.2/AC.4/1998/4.

7. Standard-setting activities

9. Under the mandate established by the Economic and Social Council in its resolution 1982/34 of 7 May 1982, the Working Group is authorized to meet to "give special attention to the evolution of standards concerning the rights of indigenous populations". At its fourth session, in 1985, the Working Group under this item of its agenda decided that it should aim at producing as a first formal step a draft declaration on indigenous rights. At that session, seven principles were drafted in preliminary wording (E/CN.4/Sub.2/1985/22, annex II). As in previous years, the report of the Working Group was transmitted to Governments, intergovernmental and non-governmental organizations and indigenous organizations. Comments on the draft principles were requested from these interested parties. It may be noted that every year since 1985, the draft declaration as prepared by the Chairperson-Rapporteur of the Working Group, Ms. Erica-Irene Daes, has been transmitted by the Secretary-General to Governments, intergovernmental and non-governmental organizations and indigenous organizations, requesting their proposals, suggestions and comments. At its fifth session, in 1987, the Working Group adopted 14 draft principles in preliminary wording (E/CN.4/Sub.2/1987/22, annex II). The Chairperson-Rapporteur was entrusted with the task of preparing a set of draft principles and preambular paragraphs for insertion into a future declaration. This working paper was adopted as a preliminary draft declaration and formed the basis of discussions at the sixth session of the Working Group, in 1988 (E/CN.4/Sub.2/1988/25). The Working Group recommended that the Chairperson-Rapporteur prepare a first revised text of the draft declaration based on comments made during the Working Group's sixth session and the written observations received from Governments, intergovernmental and non-governmental organizations and indigenous organizations (E/CN.4/Sub.2/1988/24, annex II).

10. At its seventh session in 1989, the Working Group had before it an analytical compilation of comments received and a first revised text of the draft declaration prepared by the Chairperson-Rapporteur (E/CN.4/Sub.2/1989/33/Add.1). This allowed for a discussion of the draft

declaration article by article (E/CN.4/Sub.2/1989/36, paras. 61-92). At the eighth session of the Working Group, in 1990, it was decided to establish three informal drafting groups to continue the elaboration of the draft declaration. The draft that was prepared by the Working Group at its 1990 session was based on the text of the first revised draft declaration and the analytical commentary prepared by the Chairperson-Rapporteur and the discussions carried out in the informal drafting groups (E/CN.4/Sub.2/1990/42 and annexes). The Chairperson-Rapporteur was, once again, invited to revise the draft declaration on the basis of these comments and the written observations of Governments, intergovernmental and non-governmental organizations and indigenous organizations for presentation at the ninth session of the Working Group.

11. At its ninth session in 1991, the Working Group considered the working paper of the Chairperson-Rapporteur (E/CN.4/Sub.2/1991/36). Further discussions of the preambular and operative paragraphs of the draft declaration took place and the text was agreed upon by members of the Working Group (E/CN.4/Sub.2/1991/40, annex II). The Chairperson-Rapporteur was entrusted with the preparation of a working paper based on written suggestions provided by Governments and indigenous organizations. At its tenth session, in 1992, the Working Group had before it a revised working paper prepared by the Chairperson-Rapporteur containing the draft declaration (E/CN.4/Sub.2/1992/28). On the basis of the text before the session, the Working Group completed a preliminary reading of the preambular and operative paragraphs and began a second reading (E/CN.4/Sub.2/1992/33). The Working Group recommended that the draft declaration as revised by the Chairperson-Rapporteur on the basis of the comments made during its session as well as the information received from interested parties be presented to the Working Group at its eleventh session.

12. At its eleventh session, in 1993, the Working Group had before it the working paper of the Chairperson-Rapporteur (E/CN.4/Sub.2/1993/26). Further elaborations of the draft declaration were made by members of the Working Group during the session (E/CN.4/Sub.2/AC.4/1993/CRP.4). The Working Group completed the second reading of the draft declaration and agreed upon a text (E/CN.4/Sub.2/1993/29, annex 1). In its resolution 1993/46 of 26 August 1993, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to postpone until its forty-sixth session consideration of the draft declaration; it requested the Secretary-General to submit the draft declaration to the appropriate services within the Centre for Human Rights for technical revision; it also requested the Secretary-General to transmit the text of the draft declaration to indigenous peoples and organizations, Governments and intergovernmental and non-governmental organizations.

13. At its twelfth session, in 1994, the Working Group had before it the technical review by the Centre for Human Rights (E/CN.4/Sub.2/1994/2) and the draft declaration as agreed upon by members of the Working Group at its eleventh session (E/CN.4/Sub.2/1994/2/Add.1). In accordance with the decision taken at its eleventh session, the Working Group heard general comments on the draft declaration, it being understood that these would not lead to any changes in the text of the draft declaration. At its forty-sixth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1994/45 of 26 August 1994, adopted the draft United Nations

declaration on the rights of indigenous pecples agreed upon by members of the Working Group without a vote and decided to submit it to the Commission on Human Rights at its fifty-first session. In its resolution 1995/32 of 3 March 1995, the Commission decided to recommend to the Economic and Social Council to establish an open-ended inter-sessional working group with the sole purpose of elaborating a draft declaration, considering the draft submitted by the Sub-Commission. The Commission also invited applications from organizations of indigenous people not in consultative status with the Economic and Social Council interested in participating in the working group. Such organizations were requested to send particulars of their organization to the Coordinator of the International Decade of the World's Indigenous People, who would consult with the Government concerned and transmit the information to the Committee on Non-Governmental Organizations of the Economic and Social Council for consideration and possible approval. The second session of the working group of the Commission on Human Rights to review the "Draft United Nations declaration on the rights of indigenous peoples" was held from 21 October to 1 November 1996. The report of the working group is contained in document E/CN.4/1997/102.

14. At its thirteenth session, the Working Group had before it a note by the Chairperson-Rapporteur containing certain criteria which might be applied when considering the concept of indigenous peoples (E/CN.4/Sub.2/AC.4/1995/3). At its forty-seventh session, the Sub-Commission, in its resolution 1995/38 of 24 August 1995, requested that the Chairperson-Rapporteur be entrusted with the preparation of a working paper on the concept of "indigenous people". The working paper (E/CN.4/Sub.2/AC.4/1996/2) was available at the fourteenth session of the Working Group. At its forty-eighth session, the Sub-Commission, in its resolution 1996/31 of 29 August 1996, requested the Chairperson-Rapporteur to prepare a supplementary note on the concept of "indigenous people". The above-mentioned note (E/CN.4/Sub.2/AC.4/1997/2) was available at the fifteenth session of the Working Group.

15. At its fifteenth session, the Working Group decided to discuss under this item of the agenda possible future standard-setting activities, in particular guidelines or codes of conduct for private sector energy or mining concerns.

16. At previous sessions of the Working Group, the secretariat has organized informal briefings on the human rights treaty bodies for indigenous participants. In response to requests by indigenous people and to further the information available on the different human rights mechanisms and procedures, the secretariat has compiled recent observations relating to indigenous people made by the treaty body committees. The compilation is contained in document E/CN.4/Sub.2/AC.4/1998/5.

8. Study on treaties, agreements and other constructive arrangements between States and indigenous populations

17. At its fifth session, in 1987, the Working Group recommended to the Sub-Commission on Prevention of Discrimination and Protection of Minorities the appointment of Mr. Miguel Alfonso Martínez as special rapporteur to prepare a study on the treaties formerly concluded with

indigenous peoples in various parts of the world. In its resolution 1987/17 of 2 September 1987, the Sub-Commission endorsed the recommendation and requested Mr. Alfonso Martínez to draft the general outline of such a study. The Commission on Human Rights, in its resolution 1988/56 of 9 March 1988, recommended to the Economic and Social Council that it authorize the appointment of Mr. Alfonso Martínez as Special Rapporteur with the mandate of preparing an outline on the possible purposes, scope and sources of a study to be conducted on the potential utility of treaties, agreements and other constructive arrangements between indigenous populations and Governments for the purpose of ensuring the promotion and protection of the human rights and fundamental freedoms of indigenous populations. On 27 May 1988, the Economic and Social Council adopted decision 1998/134 by which it authorized the appointment of the Special Rapporteur with the mandate of preparing the outline.

18. The outline of the aforementioned study was presented to the Sub-Commission in 1988 (E/CN.4/Sub.2/1988/24/Add.1). In its resolution 1988/20 of 1 September 1988, the Sub-Commission endorsed the outline and requested authorization of the Commission on Human Rights and the Economic and Social Council to proceed with the study. The Commission endorsed the recommendations in its resolution 1989/41 of 6 March 1989 and the Economic and Social Council authorized the study and confirmed the appointment of the Special Rapporteur in its resolution 1989/77 of 24 May 1989.

19. The Special Rapporteur presented a working paper and two questionnaires he had prepared to the Working Group at its eighth session in 1990 (E/CN.4/Sub.2/1990/42, annex VI). The information which could be provided through the questionnaires was considered by the Special Rapporteur as vital to the study. The Sub-Commission, in its resolution 1990/28, requested the Secretary-General to submit the working paper and questionnaires to Governments and indigenous organizations for their comments. A preliminary report of the Special Rapporteur was presented to the Working Group at its ninth session, in 1990, and to the Sub-Commission at its forty-third session (E/CN.4/Sub.2/1991/33). The Sub-Commission adopted decision 1991/111 of 29 August 1991 requesting that the questionnaires be submitted once again to Governments and indigenous organizations and endorsing the recommendation of the Special Rapporteur that a progress report be prepared for its forty-fourth session in 1992.

20. A first progress report was submitted to the Working Group at its tenth session and the Sub-Commission at its forty-fourth session in 1992 (E/CN.4/Sub.2/1992/32). In its decision 1992/110 of 27 August 1992, the Sub-Commission requested the Secretary-General to transmit the two questionnaires to Governments and indigenous organizations and requested the Special Rapporteur to present a second progress report to the Working Group at its twelfth session and the Sub-Commission at its forty-fourth session. In its decision 1993/110 of 26 August 1993, the Sub-Commission welcomed the discussions held at the eleventh session of the Working Group and reiterated its request to the Special Rapporteur to submit a second progress report. However, the Special Rapporteur was not able to present his second progress report as expected. The Sub-Commission, in its decision 1994/116 of

26 August 1994, recommended that the Special Rapporteur submit his second progress report to the Working Group at its thirteenth session and to the Sub-Commission at its forty-seventh session.

21. The second progress report of the Special Rapporteur was presented to the thirteenth session of the Working Group and the forty-seventh session of the Sub-Commission (E/CN.4/Sub.2/1995/27). The Sub-Commission, in its decision 1995/118 of 24 August 1995, welcomed the second progress report of the Special Rapporteur and decided to request him to submit a third progress report to the Working Group at its fourteenth session and to the Sub-Commission at its forty-eighth session. The third progress report of the Special Rapporteur (E/CN.4/Sub.2/1996/23) was submitted to the forty-eighth session of the Sub-Commission.

22. In accordance with Sub-Commission decision 1995/118 of 24 August 1995, the Special Rapporteur undertook a mission to New Zealand to examine in situ the contemporary significance of a historic treaty in one country as a practical example for inclusion in the final report. In its decision 1996/118 of 29 August 1996, the Sub-Commission requested the Special Rapporteur to submit his final report in time for it to be considered by the Working Group at its fifteenth session. For reasons beyond his control, the Special Rapporteur was unable to present his final report as requested. In its decision 1997/110, the Sub-Commission took note of the Special Rapporteur's explanation and urged him to submit his final report so as to allow it to be discussed at the sixteenth session of the Working Group and for consideration by the Sub-Commission at its fiftieth session. The final report of the Special Rapporteur is contained in document E/CN.4/Sub.2/1998/17 and addenda.

9. Working paper on indigenous peoples and their relationship to land

23. In its resolution 1996/38 of 29 August 1996, the Sub-Commission recommended that the Commission on Human Rights appoint Ms. Erica-Irene Daes as Special Rapporteur to conduct a comprehensive study on indigenous land rights. The Commission on Human Rights, in its decision 1997/114 of 13 April 1997, approved the appointment of Ms. Daes as Special Rapporteur, and requested her to prepare a working paper on indigenous people and their relationship to land. The working paper (E/CN.4/Sub.2/1997/17) was submitted to the Sub-Commission at its forty-ninth session. In its resolution 1997/12, the Sub-Commission requested the Special Rapporteur to prepare a final working paper on the basis of comments and information received from Governments, indigenous peoples and others and submit it to the Working Group at its sixteenth session and to the Sub-Commission at its fiftieth session. The final working paper of the Special Rapporteur is contained in document E/CN.4/Sub.2/1998/15.

10. Consideration of a permanent forum for indigenous people

24. In the Vienna Declaration and Programme of Action the World Conference on Human Rights recommended that the establishment of a permanent forum for indigenous people in the United Nations system be considered (Part II, para. 32). The General Assembly, in its resolution 48/163, requested the Commission on Human Rights at its fiftieth session to give the proposal its priority consideration. The Commission, in its resolution 1994/28 of

4 March 1994, requested the Assistant Secretary-General for Human Rights to invite Governments and indigenous organizations to give their views on this matter and transmit contributions received to the Working Group, together with a technical note addressing institutional issues.

25. At the twelfth session of the Working Group, a technical note (E/CN.4/Sub.2/AC.4/1994/11) was prepared by the secretariat and comments received from Governments and indigenous organizations were contained in addenda to the document. The Chairperson-Rapporteur of the Working Group also submitted a note on the permanent forum (E/CN.4/Sub.2/AC.4/1994/13) and made further suggestions for guidelines which are contained in the annex to the report of the Working Group on its twelfth session (E/CN.4/Sub.2/1994/30). The Sub-Commission, in its resolution 1994/50 of 26 August 1994, recommended that the Centre for Human Rights organize a workshop on a possible permanent forum. This recommendation was endorsed by the Commission in its resolution 1995/30 of 3 March 1994 and the workshop was requested to report on the outcome to the thirteenth session of the Working Group. The Centre for Human Rights organized a workshop at the invitation of the Government of Denmark and the Greenland Home Rule Government in Copenhagen from 24 to 28 June 1995. The report on the workshop on a permanent forum for indigenous people (E/CN.4/Sub.2/AC.4/1995/7) was submitted to the Working Group at its thirteenth session.

26. The General Assembly, in its resolution 50/157, welcomed the report on the workshop and recommended that the Secretary-General undertake a review, in close consultation with Governments and taking into account the views of indigenous people, of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people, and report to the General Assembly at its fifty-first session. The Assembly also recommended that the Commission on Human Rights, drawing on the results of the review, consider the convening of a second workshop.

27. In its resolution 1997/30 of 11 April 1997, the Commission on Human Rights requested the High Commissioner/Centre for Human Rights to convene the second workshop on a permanent forum. In cooperation with the Government of Chile, the High Commissioner/Centre for Human Rights organized the second workshop in Santiago de Chile from 30 June to 2 July 1997. The report of the Workshop (E/CN.4/1998/11 and Add. 1-2) was submitted to the fifty-fourth session of the Commission on Human Rights which decided, in its resolution 1998/20, to establish an open-ended inter-sessional working group to elaborate and consider further proposals for the possible establishment of a permanent forum for indigenous people within the United Nations system.

11. International Decade of the World's Indigenous People

28. The recommendation to proclaim an international decade of the world's indigenous people was made by the World Conference on Human Rights in the Vienna Declaration and Programme of Action (Part II, para. 32). The General Assembly, in its resolution 48/163 of 21 December 1993, proclaimed the International Decade of the World's Indigenous People, to commence on 10 December 1994, with the period 1 January to 9 December 1994 to be set aside for planning. The General Assembly invited indigenous organizations and other interested non-governmental organizations to consider contributions they can

make to the success of the Decade, with a view to presenting them to the Working Group; decided to observe one day of every year as the International Day of Indigenous People and invited the Working Group to identify an appropriate day for this purpose; and requested that the meeting to review the International Year also consider preparations for the Decade and report to the Working Group.

29. The Commission on Human Rights, in its resolution 1994/26 of 4 March 1994, invited the Working Group to propose an appropriate day of every year to be observed as the International Day of Indigenous People, following consultations with indigenous people; and requested the Working Group to identify possible projects and other activities in connection with the Decade and submit them, through the Sub-Commission, to the Commission on Human Rights at its fifty-first session. The suggestions and recommendations arising from the Technical Meeting on the International Year and Decade (20-22 July 1994) were submitted to the Working Group at its twelfth session.

30. At the twelfth session of the Working Group, it was recommended that the International Day of the World's Indigenous People be observed annually on 9 August. This recommendation was endorsed by the General Assembly in its resolution 49/214 of 23 December 1994. In the same resolution, the Assembly adopted a short-term programme of activities for the Decade and invited the Commission on Human Rights at its fifty-first session to adjust or supplement it as required. In its resolution 1995/28 of 3 March 1995, the Commission decided upon a final programme of activities for the Decade for the year 1995. The General Assembly, in its resolution 49/214, also recommended that a second technical meeting on the planning of the Decade be convened immediately prior to the thirteenth session of the Working Group. The report of the second Technical Meeting (20-21 July 1995) is contained in document E/CN.4/Sub.2/AC.4/1995/5.

31. At its fiftieth session, the General Assembly, in its resolution 50/157 of 21 December 1995, adopted the programme of activities for the International Decade of the World's Indigenous People contained in the annex to the resolution. The Commission on Human Rights, in its resolution 1996/39 of 19 April 1996, welcomed the decision of the General Assembly to adopt the programme of activities for the Decade; it also welcomed the establishment by the Coordinator of the Decade of an advisory body to provide guidance with regard to the projects and programmes financed from the Voluntary Fund for the International Decade of the World's Indigenous People. The first session of the advisory body was held from 29 April to 1 May.

32. At its fourteenth session, the Working Group decided to undertake at its fifteenth session a thorough review of the activities planned and carried out under the Programme of Activities of the Decade during its first three years. The second session of the Advisory Group for the Voluntary Fund met from 16 to 18 April 1997 and a secretariat note transmitting guidelines for the Fund (E/CN.4/Sub.2/AC.4/1997/5) was made available at the Working Group.

33. At its fifteenth session, the Working Group decided to include a sub-item on preparations for a mid-point review of the Decade. Under this item of the agenda, activities related to the International Decade, including

the Voluntary Fund for the International Decade of the World's Indigenous People, may be discussed. The third session of the Advisory Group met from 2 to 8 April 1998.

34. In its resolution 1996/34, the Sub-Commission recommended that the Centre for Human Rights organize a workshop of indigenous journalists within the framework of the Decade. The request was reaffirmed by the Sub-Commission in its resolution 1997/15. At the invitation of the Government of Spain, the Workshop of Indigenous Journalists was held in Madrid from 26 to 28 January 1998. The report of the Workshop is contained in document E/CN.4/Sub.2/AC.4/1998/6.

12. Other matters

35. Under this item of the agenda, members of the Working Group consider a range of questions including meetings and seminars which have been held or are due to be held in the near future. In this connection, it may be noted that the eleventh session of the Board of Trustees of the Voluntary Fund for Indigenous Populations met from 30 March to 1 April 1998 and agreed to recommend to the Secretary-General that travel grants be given to 50 indigenous delegates wishing to attend the Working Group and 3 indigenous delegates authorized to attend the working group of the Commission on Human Rights reviewing the draft United Nations declaration on the rights of indigenous peoples.

13. Adoption of the report of the Working Group

36. Under rule 37 of the rules of procedure, the Working Group is to report to the Sub-Commission on the work of its session. The report of the Working Group, which is prepared while the Sub-Commission is in session, will be contained in document E/CN.4/Sub.2/1998/16.